

AMENDED IN ASSEMBLY APRIL 20, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

## ASSEMBLY BILL

**No. 708**

**Introduced by Assembly Member Huffman**  
(Coauthor: Senator Strickland)

February 26, 2009

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An act to ~~add Section 12007.12 to~~ amend Section 12012 of, and to repeal and add Sections 12013 and 12154 of, the Fish and Game Code, relating to fish and wildlife.

### LEGISLATIVE COUNSEL'S DIGEST

AB 708, as amended, Huffman. Fish and wildlife: poaching.

Existing law regulates the taking or possession of birds, mammals, fish, amphibians, and reptiles. Except as expressly provided otherwise in the Fish and Game Code, any violation of that code, or of any rule, regulation, or order made or adopted under that code, is a misdemeanor. *Existing law specifically imposes a fine of up to \$30,000 or up to one year of imprisonment, or both, for the knowing unlawful taking of listed animals for commercial purposes, for the knowing unlawful possession for commercial purposes of any part of a mountain lion, bear, wild pig, bighorn sheep, elk, antelope, or deer; a pelt of a furbearing mammal, a live reptile or amphibian, any fully protected, threatened, or endangered species, or any quantity of fish or shellfish in excess of the quantity permitted by the code, and for the knowing unlawful sale for commercial purposes, or the unlawful possession with the intent to sell, of any part of, or product made from, any wildlife. Existing law, except as specified, also prohibits any person convicted of a violation punishable under those unlawful taking and possession and sale provisions from thereafter taking wildlife in this state for a period of*

*not less than one year from the date of conviction, and provides for the revocation of related entitlements. Existing law prohibits a person, upon the 3rd conviction of a specified violation relating to the taking or possession of fish, reptiles, or amphibia, or parts thereof, in any 5-year period, and upon any subsequent conviction during a 5-year period, from taking any fish, reptiles, or amphibia in the state for 3 years from the date of the last conviction, and requires the Fish and Game Commission to revoke the sport fishing license of such a person for the period of the prohibition.*

*This bill would ~~establish specific minimum and unspecified maximum~~ fines for certain violations of existing law relating to unlawful taking and possession, where the Department of Fish and Game determines the value of the in fish or wildlife unlawfully taken or possessed is in excess of \$400. The bill would make legislative findings and declarations relating to poaching delete those unlawful taking and possession and sale provisions and those specific taking and entitlement prohibitions. The bill would, instead, except as specified, provide that any person who illegally takes, possesses, imports, exports, sells, purchases, barter, trades, or exchanges any amphibian, bird, fish, mammal, or reptile, or part thereof, for profit or personal gain, is guilty of a misdemeanor punishable by a fine of not less than \$5,000, nor more than \$40,000, or imprisonment in the county jail for not more than one year, or by both that fine and imprisonment. The bill would increase the fine for a 2nd or subsequent violation. The bill would require that moneys equivalent to 50% of the revenue deposited in the Fish and Game Preservation Fund from fines and forfeitures collected pursuant to those provisions be allocated for the support of the Special Operations Unit of the Department of Fish and Game, and used for law enforcement purposes.*

*The bill, except as specified, would provide that any person who illegally takes or possesses in the field more than 3 times the daily bag limit, or who illegally possesses more than 3 times the legal possession limit, of fish, reptiles, birds, amphibians, or mammals is guilty of a misdemeanor subject to a fine of not less than \$5,000 nor more than \$40,000, or imprisonment in the county jail for not more than one year, or by both that fine and imprisonment. The bill would increase the fine for a 2nd or subsequent violation. The bill, except as specified, would provide that any person who maliciously or intentionally maims, mutilates, or tortures any fish, reptile, bird, amphibian, or mammal provided for in the code is guilty of a crime punishable as prescribed.*

*The bill would authorize the department, upon a conviction of certain violations, to suspend or permanently revoke a person's hunting or sport fishing license or permit privileges. The bill would authorize any person whose privileges are suspended or revoked to appeal the suspension or revocation to the commission, and would require the commission to initiate the appeal process within 12 months of the violator's appeal request. The bill would authorize the department to adopt regulations to implement those suspension and revocation provisions.*

*The bill, by creating new crimes, would impose a state-mandated local program.*

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that no reimbursement is required by this act for a specified reason.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: ~~no~~-yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) The illegal poaching of fish and wildlife, including the
- 4 ~~wanton~~ egregious killing of migratory birds, deer, bear, fish, and
- 5 abalone, poses a serious threat to California's wildlife species and
- 6 biodiversity.
- 7 (b) Arrests and reported incidents of poaching have increased
- 8 dramatically in California in recent years. Between 2003 and 2007
- 9 the number of violations more than doubled, increasing from 6,538
- 10 hunting violations and 8,001 fishing violations in 2003 to 17,840
- 11 hunting violations and 15,892 fishing violations in 2007. Illegal
- 12 poaching of waterfowl in particular has reached the highest level
- 13 in decades.
- 14 (c) Current penalties and enforcement levels have proved
- 15 insufficient to serve as an effective deterrent for illegal poachers.
- 16 Financial resources dedicated to enforcement of hunting and fishing
- 17 laws have also declined significantly at the same time that poaching
- 18 and profits from poaching have soared.

(d) California in 2008 had less than 300 fish and game wardens on active duty to patrol the entire state, which includes thousands of miles of coastline and hundreds of thousands of acres of public lands.

(e) The economic impact of illegal poaching diminishes the significant public investment the state and law abiding fishers and hunters have made in restoring habitat for fish and wildlife and protecting biodiversity.

(f) California's native fish and wildlife are held in trust for the common good of all the people of California.

(g) It is therefore the intent of the Legislature that existing laws prohibiting illegal poaching be enforced, that sufficient resources be dedicated for effective enforcement of those laws, and that the penalties for illegal poaching be enhanced, including, in particular, the penalties for egregious poaching violations exhibiting a wanton disregard for the laws protecting native fish and wildlife and the public trust purposes of those resources.

~~SEC. 2. Section 12007.12 is added to the Fish and Game Code, to read:~~

~~12007.12. (a) In addition to any other fine, forfeiture, assessment, or penalty imposed pursuant to law, a violation of any of the following sections shall be penalized according to this subdivision if the value of the fish or wildlife unlawfully taken or possessed is in excess of four hundred dollars (\$400):~~

~~(1) For a violation of Section 2000, a fine of not less than five hundred dollars (\$500) or more than \_\_\_\_.~~

~~(2) For a violation of Section 2002, a fine of not less than five hundred dollars (\$500) or more than \_\_\_\_.~~

~~(3) For a violation of Section 3007, a fine of not less than one thousand dollars (\$1,000) or more than \_\_\_\_.~~

~~(4) For a violation of Section 4330, a fine of not less than five hundred dollars (\$500) or more than \_\_\_\_.~~

~~(5) For a violation of Section 4750, a fine of not less than one thousand dollars (\$1000) or more than \_\_\_\_.~~

~~(b) The valuation shall be determined by the department pursuant to regulation. The taking or possession of each individual animal is a separate violation for the purposes of this section.~~

~~SEC. 2. Section 12012 of the Fish and Game Code is amended to read:~~

1 ~~12012. (a) Notwithstanding any other provision of this code,~~  
2 ~~the knowing unlawful taking for commercial purposes of a~~  
3 ~~mammal, bird, amphibian, reptile, fish, or any other species in~~  
4 ~~violation of this code is an offense punishable by imprisonment~~  
5 ~~in the county jail for not more than one year, by a fine of not more~~  
6 ~~than thirty thousand dollars (\$30,000), or by both that~~  
7 ~~imprisonment and fine. This subdivision does not apply to a person~~  
8 ~~issued a commercial fishing license pursuant to Section 7852 who~~  
9 ~~takes finfish in an amount that is less than 1,000 pounds more than~~  
10 ~~the amount of fish authorized by the applicable statute or~~  
11 ~~regulation.~~

12 ~~(b) Notwithstanding any other provision of this code, the~~  
13 ~~knowing unlawful possession for commercial purposes of any part~~  
14 ~~of a mountain lion, bear, wild pig, bighorn sheep, elk, antelope,~~  
15 ~~or deer, a pelt of a furbearing mammal, a live reptile or amphibian,~~  
16 ~~any fully protected, threatened, or endangered species, or any~~  
17 ~~quantity of fish or shellfish in excess of the quantity permitted by~~  
18 ~~other provisions of this code is an offense punishable by~~  
19 ~~imprisonment in the county jail for not more than one year, by a~~  
20 ~~fine of not more than thirty thousand dollars (\$30,000), or by both~~  
21 ~~that imprisonment and fine. This subdivision does not apply to a~~  
22 ~~person issued a commercial fishing license pursuant to Section~~  
23 ~~7852 or a commercial fish business license pursuant to Article 7~~  
24 ~~(commencing with Section 8030) of Chapter 1 of Part 3 of Division~~  
25 ~~6 who possesses finfish in an amount that is less than 1,000 pounds~~  
26 ~~more than the amount of finfish authorized by the applicable statute~~  
27 ~~or regulation.~~

28 ~~(c) Notwithstanding any other provision of this code, the~~  
29 ~~knowing unlawful sale in violation of this code for commercial~~  
30 ~~purposes, or the unlawful possession with the intent to sell in~~  
31 ~~violation of this code, of any part of, or product made from, any~~  
32 ~~wildlife is an offense punishable by imprisonment in the county~~  
33 ~~jail for not more than one year, by a fine of not more than thirty~~  
34 ~~thousand dollars (\$30,000), or by both that imprisonment and fine.~~  
35 ~~This subdivision applies only to a person who knowingly acquires~~  
36 ~~for commercial purposes any part of, or product made from, any~~  
37 ~~unlawfully taken wildlife.~~

38 *12012. (a) Notwithstanding any other provision of this code,*  
39 *except as provided in subdivision (e) or (f), any person who*  
40 *illegally takes, possesses, imports, exports, sells, purchases,*

1 *barter, trade, or exchange any amphibian, bird, fish, mammal,*  
2 *or reptile, or part thereof, for profit or personal gain is guilty of*  
3 *a misdemeanor punishable by a fine of not less than five thousand*  
4 *dollars (\$5,000), nor more than forty thousand dollars (\$40,000),*  
5 *or imprisonment in the county jail for not more than one year, or*  
6 *by both that fine and imprisonment.*

7 *(b) If a person is convicted of a second or subsequent violation*  
8 *of subdivision (a), that person shall be punished by a fine of not*  
9 *less than ten thousand dollars (\$10,000), nor more than fifty*  
10 *thousand dollars (\$50,000), or imprisonment in the county jail for*  
11 *not more than one year, or by both that fine and imprisonment.*

12 ~~(d)~~

13 *(c) (1) Whenever a second or subsequent violation of*  
14 *subdivision (a), ~~(b), or (e)~~ also involves a violation of Section*  
15 *8685.5, 8685.6, 8685.7, or 8688—~~which~~ that is punishable by*  
16 *subdivision (b) of Section 12004, the offense shall be punishable*  
17 *by a fine of not more than thirty thousand dollars (\$30,000), or by*  
18 *imprisonment pursuant to subdivision (b) of Section 12004, or by*  
19 *both that fine and imprisonment.*

20 *(2) Whenever a second or subsequent violation of subdivision*  
21 *(a), ~~(b), or (e)~~ also involves a violation of Section 4758—~~which~~ that*  
22 *is punishable pursuant to subdivision (a) of Section 12005, the*  
23 *offense shall be punishable by a fine of not more than thirty*  
24 *thousand dollars (\$30,000), or by imprisonment pursuant to*  
25 *subdivision (a) of Section 12005, or by both that fine and*  
26 *imprisonment.*

27 ~~(e)~~

28 *(d) Notwithstanding Section 802 of the Penal Code, prosecution*  
29 *of an offense punishable under this section shall be commenced*  
30 *within three years after commission of the offense.*

31 ~~(f) As used in this section:~~

32 ~~(1) “Commercial purposes” means import, export, sale,~~  
33 ~~purchase, barter, trade, exchange, or possession for profit or~~  
34 ~~personal gain.~~

35 ~~(2) “Fish” means fish as defined by Section 45.~~

36 ~~(3) “Wildlife” means wildlife as defined by Section 711.2.~~

37 *(e) This section does not apply to fish taken pursuant to a*  
38 *commercial fishing license issued pursuant to Section 7852, or*  
39 *fish sold pursuant to a commercial fish business license issued in*

1 *accordance with Article 7 (commencing with Section 8030) of*  
2 *Chapter 1 of Part 3 of Division 6.*

3 *(f) This section does not supersede Section 12005 or 12009.*

4 *(g) Moneys equivalent to 50 percent of the revenue deposited*  
5 *in the Fish and Game Preservation Fund from fines and forfeitures*  
6 *collected pursuant to this section shall be allocated for the support*  
7 *of the Special Operations Unit of the department, and used for law*  
8 *enforcement purposes.*

9 *SEC. 3. Section 12013 of the Fish and Game Code is repealed.*

10 ~~12013. (a) In addition to any other penalty prescribed by law,~~  
11 ~~any person convicted of a violation punishable under subdivision~~  
12 ~~(a) of Section 12012 relating to wildlife, except fish, is prohibited~~  
13 ~~from thereafter taking wildlife, except fish, in this state for a period~~  
14 ~~of not less than one year from the date of conviction. In~~  
15 ~~determining the length of the prohibition imposed pursuant to this~~  
16 ~~subdivision, the court shall take into consideration the gravity of~~  
17 ~~the offense for which the person was convicted, including, but not~~  
18 ~~limited to, whether the species was illegally taken for commercial~~  
19 ~~purposes, the magnitude of the offense, damage to the species as~~  
20 ~~a resource in the geographic area where taken, previous convictions~~  
21 ~~for violations of this code, and the motivation of the person~~  
22 ~~convicted. Any license, permit, tag, stamp, or other entitlement to~~  
23 ~~take or possess wildlife, except fish, for any purpose other than~~  
24 ~~for commercial purposes that has previously been issued to that~~  
25 ~~person shall be immediately revoked by the court and that person,~~  
26 ~~during the period of the prohibition, shall not apply for a license,~~  
27 ~~permit, tag, stamp, or other entitlement to take or possess wildlife,~~  
28 ~~except fish, for any purpose other than for commercial purposes.~~

29 ~~(b) In addition to any other penalty prescribed by law, any~~  
30 ~~person convicted of a violation punishable under subdivision (a)~~  
31 ~~of Section 12012 relating to fish is prohibited from thereafter taking~~  
32 ~~or possessing fish in this state for a period of not less than one year~~  
33 ~~from the date of conviction. In determining the length of the~~  
34 ~~prohibition imposed pursuant to this subdivision, the court shall~~  
35 ~~take into consideration the gravity of the offense for which the~~  
36 ~~person was convicted, including, but not limited to, such factors~~  
37 ~~as whether the species was illegally taken for commercial purposes,~~  
38 ~~the magnitude of the offense, damage to the species as a resource~~  
39 ~~in the geographic area where taken, previous convictions for~~  
40 ~~violations of this code, and the motivation of the person convicted.~~

1 ~~Any license, permit, tag, stamp, or other entitlement to take or~~  
2 ~~possess fish for any purpose other than for commercial purposes~~  
3 ~~that has previously been issued to that person shall be immediately~~  
4 ~~revoked and that person, during the period of the prohibition, shall~~  
5 ~~not apply for a license, permit, tag, stamp, or other entitlement to~~  
6 ~~take or possess fish for any purpose other than for commercial~~  
7 ~~purposes.~~

8 ~~(e) As used in this section, “commercial purposes” means for~~  
9 ~~profit or personal gain, “fish” means fish as defined by Section~~  
10 ~~45, and “wildlife” means wildlife as defined by Section 711.2.~~

11 ~~(d) This section does not apply to any person who is licensed~~  
12 ~~to take any fish or wildlife for commercial purposes and does not~~  
13 ~~supersede or otherwise affect any other provision of this code or~~  
14 ~~regulations adopted pursuant to this code relating to issuing,~~  
15 ~~suspending, or revoking licenses or other entitlements to take,~~  
16 ~~possess, buy, or sell wildlife or fish for commercial purposes.~~

17 *SEC. 4. Section 12013 is added to the Fish and Game Code,*  
18 *to read:*

19 *12013. (a) Notwithstanding any other provision of this code,*  
20 *except as provided in subdivision (d), any person who illegally*  
21 *takes or possesses in the field more than three times the daily bag*  
22 *limit, or who illegally possesses more than three times the legal*  
23 *possession limit, of fish, reptiles, birds, amphibians, or mammals*  
24 *is guilty of a misdemeanor and shall be subject to a fine of not less*  
25 *than five thousand dollars (\$5,000), nor more than forty thousand*  
26 *dollars (\$40,000), or imprisonment in the county jail for not more*  
27 *than one year, or by both that fine and imprisonment.*

28 *(b) If a person is convicted of a second or subsequent violation*  
29 *of subdivision (a), that person shall be punished by a fine of not*  
30 *less than ten thousand dollars (\$10,000), nor more than fifty*  
31 *thousand dollars (\$50,000), or imprisonment in the county jail for*  
32 *not more than one year, or by both that fine and imprisonment.*

33 *(c) Notwithstanding any other provision of this code, except as*  
34 *provided in subdivision (d), any person who maliciously or*  
35 *intentionally maims, mutilates, or tortures any fish, reptile, bird,*  
36 *amphibian, or mammal provided for in this code is guilty of a*  
37 *crime punishable in accordance with subdivision (a). Nothing in*  
38 *this subdivision affects any legal hunting, fishing, or trapping*  
39 *activity, including, but not limited to, efforts to dispatch a wounded*  
40 *mammal, bird, or fish taken legally.*



1     (d) *This section does not supersede Section 12005, 12006.6, or*  
2     *12009.*

3     *SEC. 5. Section 12154 of the Fish and Game Code is repealed.*

4     ~~12154. Upon the third conviction of any person of a violation~~  
5     ~~of any provision of this code or regulation adopted pursuant thereto~~  
6     ~~relating to the taking or possession of fish, reptiles, or amphibia,~~  
7     ~~or parts thereof, in any five-year period, and upon any conviction~~  
8     ~~subsequent to the three convictions during a five-year period, that~~  
9     ~~person shall be prohibited from taking any fish, reptiles, or~~  
10    ~~amphibia in the state for three years from the date of the last~~  
11    ~~conviction. The commission shall revoke the sport fishing license~~  
12    ~~of the person who is prohibited from taking fish, reptiles, or~~  
13    ~~amphibia in this state, if he or she has one, for the period of~~  
14    ~~prohibition.~~

15    ~~It shall be unlawful for any person to obtain, or attempt to obtain,~~  
16    ~~a sport fishing license during a period of prohibition.~~

17    *SEC. 6. Section 12154 is added to the Fish and Game Code,*  
18    *to read:*

19    *12154. Upon a conviction of a violation of Section 12012 or*  
20    *12013, the department may suspend or permanently revoke a*  
21    *person's hunting or sport fishing license or permit privileges. Any*  
22    *person whose privileges are suspended or revoked pursuant to*  
23    *this section may appeal the suspension or revocation to the*  
24    *commission. The commission shall initiate the appeal process*  
25    *within 12 months of the violator's appeal request. The department*  
26    *may adopt regulations to implement this section.*

27    *SEC. 7. No reimbursement is required by this act pursuant to*  
28    *Section 6 of Article XIII B of the California Constitution because*  
29    *the only costs that may be incurred by a local agency or school*  
30    *district will be incurred because this act creates a new crime or*  
31    *infraction, eliminates a crime or infraction, or changes the penalty*  
32    *for a crime or infraction, within the meaning of Section 17556 of*  
33    *the Government Code, or changes the definition of a crime within*  
34    *the meaning of Section 6 of Article XIII B of the California*  
35    *Constitution.*